Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1975.

No. 75-3661

FRANK AGOST AND JUANITA AGOST, Appellants,
v.
THE STATE OF IDAHO, Appellee

ROLAND NEWLAN AND FRANCES NEWLAN, Appellants,
v.
THE STATE OF IDAHO, Appellee
and
THELMA SCWARTZ as Adminstratrix of the Estate of Frank Harrison and Patricia Rippee and Michael Harrison Rippee, respectively; and THE ALLSTATE INSURANCE CO., Inc., Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF IDAHO

JURISDICTIONAL STATEMENT

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Orofino, Idaho

WEBB, PIKE, BURTON AND CARLSON
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Counsel for the Appellants

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JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of the State of Idaho, entered on April 30, 1975, affirming the dismissal of Appellant's wrongful deeath actions against the State of Idaho for lack of timely compliance with the notice provisions of the Idaho Tort Claims Act. Appellants submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of the State of Idaho is reported at 96 Idaho—, 535 P.2d 1348 (1975). The options of the Trial Courts, granting Appellee's motions to dismiss, are unreported. Copies of the opinions and of the the orders of the Trial Courts, and the opinion and judgment of the Supreme Court of the State of Idaho, are attached hereto as Appendix A.

JURISDICTION

This appeal is taken to declare invalid the notice provisions of the Idaho Tort Claims Act, embodied in Idaho Code §6-905 and enforced by Idaho Code §6-908, as unconstitutional deprivations of Appellant's due process and equal protection rights gudranteed by the Fourteenth Amendment to the Constitution of the United States. The judgment of the Supreme Court of the State of Idaho was entered on April 30, 1975. Timely petition for rehearing was filed in the Supreme Court of the State of Idaho on May 20, 1975. Rehearing was denied on June 10, 1975, and notice of appeal was filed in that court on August 28, 1975.

The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1257(2).

STATUTES INVOLVED

Section 5-219(4), 6-903, 6-905, and 6-908 of the Idaho Code, as amended, are set forth in Appendix B hereto.

QUESTIONS PRESENTED

Is the notice of claim requirement of Idaho Code §-905 an unconstitutional denial of equal protection to victims of governmental torts in that it arbitrarily deprives one who has failed to comply with its provisions of the fundamental right of access to judicial process, a right implicit in the Fourteenth Amendment to the Constitution of the United States?

If no fundamental right of access to judicial process is found to exist, is the classification created by Idaho Code §6-905 nevertheless not substantially related to the stipulated object of the claims statute, thus constituting a denial of equal protection?

By creating an irrebuttable presumption that the purpose of Idaho Code §6-905 cannot be met if a governmental tort victim fails to comply with the notice of claim requirement, does Idaho Code §6-905 deprive Appellants of their procedural due process rights guaranteed by the Fourteenth Amendment to the Constitution of the United States?

STATEMENT OF THE CASE

I.

STATEMENT OF FACTS

In the Agost case, Frank Agost and Juanita Agost individual, and Frank Agost as Personal Representative of the Estate of Dale F. Agost, have brought a claim against the State of Idaho for damages for the wrongful death of their son, Dale F. Agost.

Dale F. Agost died instantly on July 31, 1972, as the result of an accident suffered while traveling as the sole occupant of an automobile on Idaho State Highway 11, between Pierce and Greer in Clearwater County, Idaho. The Appellants charged that the direct cause of the fatal accident was the extremely slick and slippery conditions of Interstate 11 at the point where Dale F. Agost lost his life.

Appellants further charged that agents of the Idaho Department of Highways were present at the scene prior to, and during and after, the accident involving Dale F. Agost; that agents of the Department of Highways were repairing portions of said Highway 11 and had shortly before the accident applied an oil-dust coat which was tracked from the portion being repaired onto the pavement; and that oil, when exposed to rain, becomes unreasonably slick and caused the deceased's car to slide from the road.

Within hours after the accident, police officers from the Idaho State Patrol and a supervisor from the State Highway Department were on the scene preparing written reports. These reports were later filed with and became part of the records of the Department of Law Enforcement, State of Idaho, and with the Idaho Department of Highways.

In the Newlan case, Roland Newlan and Frances Newlan, the father and mother of Linda Newlan, deceased, and her heirs at law, have brought a claim against the State of Idaho and others for the wrongful death of Linda Newlan.

Linda Newlan died as the result of a June 1, 1971, automobile accident about twenty miles north of Dubois, Clark County, Idaho, on Interstate Highway 15. The Appellants claim that the accident which resulted in the death

of Linda Newlan was caused by negligent planning and costruction of Interstate Highway 15 by the Idaho Department of Highways, in that the particular design and construction produced an extremely slick and slippery paved surface when exposed to rain or wet weather, as a result of which the operator of the motor vehicle in which Linda Newlan was a passenger lost control of the vehicle, operated upon the slick surface caused by inclement weather, and collided with another vehicle, causing Linda Newlan's death.

The Appellants Newlan contend that the accident was immediately investigated by the Idaho Department of Highways personnel, and by personnel of the Idaho Department of Law Enforcement, and that the State of Idaho had actual notice of the accident and the death of Linda Newlan as a result of the negligent design and construction of the highway within hours after the accident itself. Reports were made by these agencies and became part of the knowledge of the State of Idaho, giving them actual knowledge of the accident and of the death within hours after its occurrence.

II.

COURSE OF PROCEEDINGS

On May 23, 1973, Appellants Agost filed a Notice of Claim, received by the Secretary of State's office on that date, bringing an action against the State of Idaho for damages for the wrongful death of their son, Dale F. Agost. This claim was received by the state 176 days after the 120 day notice requirement of Idaho Code §6-905 had expired.

Thereafter, on September 5, 1973, Appellants Agost brought suit against the State of Idaho in the Second Judicial District in and for the County of Clearwater. Subsequently, Appellee, on December 20, 1973, filed a motion

to dismiss pursuant to Rule 12(b)(1), Idaho Rules of Civil Procedure, based upon Appellant's failure to comply with the statutory notice requirement of Idaho Code §6-905. On March 29, 1974, Judge Roy J. Mosman granted Appellee's motion to dismiss. The order granting Appellee's motion was subsequently appealed to the Supreme Court of the State of Idaho.

On May 24, 1973, the Appellants Newlan filed their notice of claim with the Secretary of State of the State of Idaho. Suit was filed on June 1, 1973. On September 26, 1973, the State of Idaho filed a motion to dismiss contending that the notice of claim was not timely filed. Upon hearing, the District Court issued its opinion dated November 19, 1973, granting the motion to dismiss. Order granting the motion was entered the same day. Notice of appeal from that order was filed January 17, 1974.

The two cases were consolidated for consideration upon appeal.

In an opinion filed April 30, 1975, with Chief Justice McQuade dissenting, the majority of the Idaho Supreme Court affirmed the Trial Court's dismissal of Appellants' suit for failure to comply with the statutory notice requirement of Idaho Code §6-905. On May 20, 1975, a petition for rehearing was filed with the Supreme Court of the State of Idaho. Rehearing was denied on June 10, 1975.

HOW THE FEDERAL QUESTIONS ARE PRESENTED

Appellants Agost first raised their contention that the notice provision of Idaho Code §6-905 violates both the equal protection and due process clauses of the Fourteenth Amendment, by a pleading in the Amended Complaint filed in the District Court of the Second Judicial District of the State of Idaho on January 11, 1974. These contentions were again raised in the Plaintiffs' brief in opposition to

motion to dismiss, filed in the same Court on January 15, 1974. Neither contention was considered in the order granting Appellee's motion to dismiss, entered on March 29, 1974, by Hon. Roy E. Mosman, District Court Judge.

Appellants Agost again raised the issue of the Constitutionality of Idaho Code §6-905, in light of the equal protection clause of the Fourteenth Amendment, in the appeal brief filed in the Supreme Court of the State of Idaho on October 15, 1974. These contentions were considered and rejected in the decision below, issued on April 30, 1975.

Appellants Agost again presented equal protection and procedural due process challenges to Idaho Code §6-905 in the brief in support of petition for rehearing, filed in the Supreme Court of the State of Idaho on May 20, 1975. The petition for rehearing was denied on June 10, 1975, with no express treatment of these issues.

Appellants Newlan argued the unconstitutionality of the notice requirement, contending both a denial of equal protection and a violation of the due process clause of the Fourteenth Amendment, at a hearing upon the State of Idaho's motion to dismiss held on Ooctober 5, 1973. This position was again expressed in the Appellants Newlan's brief filed in the Trial Court on November 6, 1973. These arguments were considered and rejected by the Trial Court in its opinion of November 19, 1973.

Both of these arguments were advanced to the Supreme Court of the State of Idaho upon appeal in briefs sumbitted by the Defendants Newlan on June 10, 1974. The same issues were presented by brief in support of petition for rehearing filed May 20, 1974.

The contentions were considered and rejected by the Supreme Court of the State of Idaho by opinion issued

April 30, 1975. Petition for rehearing was denied without opinion on June 10, 1975.

All of the aforementioned documents in which Appellants' federal questions by the respective Courts, are included in the certified copy of the record.

THE QUESTIONS ARE SUBSTANTIAL

The judgment of the Supreme Court of Idaho, in the instant case, has revived the last vestige of the anachronistic doctrine of sovereign immunity. This decision completely renounces the time honored maxim that:

> "Equal protection of the laws in the sense it is used in the Fourteenth Amendment implies that all litigants similarly situated may appeal to the Courts for relief under like conditions and without discrimination." **Communist Party U.S.A. v. Moysey,** 141 F.Supp. 232, 340, **Republic Pictures Corp. v. Kappler,** 152 F.2d 543.

Since the majority of the states have enacted Tort Claims Acts to replace the doctrine of sovereign immunity, many with notice of claims provisions, the questions herein are of nationwide import.

1. THE NOTICE OF CLAIM REQUIREMENT OF IDAHO CODE §6-905 UNCONSTITUTIONALLY DENIES EQUAL PROTECTION TO VICTIMS OF GOVERNMENT TORTS IN THAT IT ARBITRARIALY DENIES ONE WHO FAILS TO COMPLY WITH ITS PROVISONS THE FUNDAMENTAL RIGHT OF ACCESS TO THE JUDICIAL PROCESS IMPLICIT IN THE FOURTEENTH AMENDMENT.

The decision below presents this honorable Court with the unique opportunity of determining whether a fundamental right of access to the judicial process exists as an implicit grant of the Fourteenth Amendment.

In upholding the constitutionality of the notice of claim provisions of the Idaho Tort Claims Act, under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, the Supreme Court of the State of Idaho held that Idaho Code §6-905, enforced by §6-908, does not establish a suspect classification or infringe upon a fundamental right protected by the United States Constitution. Appellants herein suggest that a strict judicial scrutiny test should have been applied to this statute based upon the existance of a fundamental right of access to the judicial process implicit in the Fourteenth Amendment.

The instant statute divides the natural class of tort victims into two sub-classes, victims of private negligence who need not comply with special notice of claim requirements, and victims of governmental negligence, upon whom a 120 day notice of claim requirement is arbitrarily imposed. The enactment of the Idaho Tort Claims Act was a legislative recognition of liability on the part of state governmental entities for torts inflicted by them or their employees. The notice provisions of Idaho Code §6-905, however, replace "sovereign immunity" with a miniature statute of limitations which unreasonably exploits the natural tendency of those who have suffered the loss of a loved one to avoid legal adjudication of their claim until grief has subsided, and the unwary victim of governmental negligence who is unsophisticated in the ways of government claim statutes, thus closing the Courts and denying redress to victims of governmental negligence who have, quite naturally, not complied with the statutory notice requirement.

From the execution of the Magna Charta, the right of the citizenry to complete access to judicial redress of injury has been considered basic to democracy. Tihs historic

document guaranteed that "To none will we sell, to none will we deny, or delay, right or justice," Magna Charta, Chapter 40. Within reasonable confines, this Court has ratified the maxim embodied in the Magna Charta on numerous occasions. Chief Justice Marshall's statement, as follows, is especially indicative of the historical basis of a fundamental right of access to Courts in our system: "It is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress." **Marbury v. Madison,** 5 U.S. 87, 93 (1803).

In orderly historical progression, this Court has time and again described the right of access to judicial process as basic to our judicial systems. **Barbier v. Connolly,** 113 U.S. 27, 31 (1885); **Boddie v. Connecticut,** 401 U.S. 371 (1971); **Bivens v. Six Unknown Named Agents,** 403 U.S. 388 (1971).

Recognizing that reasonable access to judicial resolution of disputes is the only viable alternation to force in a free society, Justice Douglas has stated: "The question (of the fundamental nature of a claimed right) historically has been whether the right claimed is of the very essence of a scheme of ordered liberty." **Boddie v. Connecticut, supra,** at 385. Appellants strongly suggest that few rights are so integral to the continuance of a free society as the right of access to judicial process.

The decision below treats **Boddie v. Connecticut, supra,** as being inapplicable to the instant case. Admittedly, **Boddie** involved the denial of access to Courts based upon wealth. However, the significance here of **Boddie** lies in the fact that it dealt with the access rights of **Plaintiffs** in **civil** suits. Access litigation, as Justice Harlan stated, has "typically involved rights of Defendants — not, as here, persons seeking access to the judicial process in the first instance." **Boddie v. Connecticut,** at 375. Thusly,

Boddie announces that the right of access to the Courts is not just the right of the Defendant charged with crime, but is also the right of every injured party to civil redress in common with every other injured party.

The fundamental nature of the right of access to judicial process has also been a dominant factor in the finding of unconstitutionality, by the Supreme Courts of Nevada and Michigan, of similar notice of claim statutes in those states' Tort Claims Acts. **Reich v. State Highway Dept.,** 194 N.W.2d 700 (Mich. 1972); **Turner v. Staggs,** 510 P.2d 879 (Nev. 1973)

Accordingly, because the consideration of a civil Plaintiff's fundamental right of access to Court has been referred to in numerous decisions of this Court, and of State and Federal Courts of Appeal, Appellants argue that the time is ripe for full legal consideration of this right which is basic to our heritage and constitutional system. Since Idaho Code §6-905 has the effect of precluding suit against the government in tort for noncompliance with its unreasonable statute of limitations, it affects and works directly to prohibit the exercise of the fundamental right of access to the judicial process. It should therefore be subject to the strict judicial scrutiny test under an equal protection analysis.

2. THE DECISION BELOW RAISES SIGNIFICANT RECURRING PROBLEMS CONCERNING THE PROPER EQUAL PROTECTION TEST OF A STATE STATUTE WHICH AFFECTS NEITHER A SUSPECT CLASS NOR A FUNDAMENTAL RIGHT.

In the event that no fundamental right is found to be affected by the classification created by Idaho Code §6-905, this legislative limitation on the right to sue a government entity in tort still fails to pass constitutional muster.

As stated, the notice of claim requirement of Idaho

Code §6-905 divides the natural class of tort victims into two sub-classes, victims of governmental negligence and victims of private negligence. Differential treatment is accorded these classes in that the victim of governmental tort losses his right to relief for failure to comply with the notice requirement while no similar burden is placed on the victim of a private tort.

In assessing the constitutional validity of this statutory classification, the majority of the Idaho Supreme Court applied the traditional equal protection test embodied in **McGowan v. Maryland,** 366 U.S. 420, 425-6; 81 S.Ct. 1101, 1105 (1961). Pursuant to that test "the constitutional safeguard (of the equal protection clause) is offended only if the classification rests on grounds wholly irrelevant to the achievement of the state's objective." Further, "a statutory discrimination will not be set aside if any state of facts may be conceived to justify it." **McGowan v. Maryland, supra.** Following this mandate, the Court found, in **Jorstad v. City of Lewiston,** 93 Idaho 122, 456 P.2d 766 (1969), two purported justifications for the statutory notice requirement. These were (1) to give the government entity to investigate the claim, deetermine its merits, and prepare a defense if necessary and (2) to give the government entity time to negotiate an amicable accord with the injured party.

In 1971, however, this Court, in **Reed v. Reed,** 404 U.S. 71 (1971), proposed a new more stringent version of the traditional rational basis test of a statutory classification under the equal protection clause. Pursuant to this test, a statutory classification, affecting neither a class deemed supect or a fundamental right, "must be reasonable, not abritrary, and must rest on some ground of difference having a **fair and substantial relation to the object of the legislation,** so that all persons similarly circumstanced

shall be treated alike." **Reed v. Reed, supra,** at 76 (emphasis added).

The California Supreme Court, in **Brown v. Merlo,** 506 P.2d 212 (1973) utilized the substantial relationship test to strike down California's automobile guest statute which, like the notice of claim provision of Idaho Code §6-905, completely barred a Plaintiff's rights to seek redress for tortious injury. In doing so, the Court held that the state cannot rely on "conceivable but totally unrealistic" justifications for different classifications. **Brown v. Merlo, supra,** at 219, n. 7. Since the notice provision of Idaho Code §6-905 and the guest statutes both work to bar a tort Plaintiff's right to recovery, the application of the substantial relationship test by the California Supreme Court is even more relevant here.

Federal District Courts have also utilized this new test in equal protection cases. In **O'Neill v. Dent,** 364 F.Supp. 565, 578 (1973), the U.S. District Court, E.D. New York, enunciated the test as follows:

> "Under this approach courts are constrained to examine the actual empirical relationship between the classification and its lawful object rather than accept one hypothetical legislative justification to the exclusion of others . . . and also to determine whether there is a less restrictice way to achieve these goals."

In light of the specified test, we must now examine the two justifications offered for the notice of claim provision of Idaho Code §6-905. In doing so, it shall become evident that the statutory classification created by this statute does not bear a fair and substntial relationship to the purpose of the notice procedure.

First, the state contends that the notice of claim provision allows the governmental entity time to investigate the claim, determine its merits, and prepare a defense if necessary. In the instant cases, however, the accident was investigated by both the Idaho State Police and the State Highway Department within hours after the incidents. Reports of these agencies were later filed with the Department of Law Enforcement.

Thus, the government entities protected by the notice requirement have, at their disposal, the necessary information to determine the merits of this claim and to prepare a defense. The state possesses an overwhelming amount of investigative personnel. State police, highway officials, insurance investigators, and attorneys all are capable of investigating a potential claim. Private tort-feasors, not entitled to notice, seem to be quite capable of investigating and defending a suit brought against them without any of this information and personnel. Since this information and personnel are available to the state whether or not notice is given, it is difficult to imagine any burden on the investigative ability of the state caused by failure to comply with the notice of claims requirement.

Finally, in defending the substantive issues of liability, the state utilizes all the independently acquired information at its disposal. This information plays a substantial part in determining governmental liability on the substantive merits of the case. It is inconsistent to disregard the availability of this information at the procedural level. Thus, it is inconceivable that proper investigation hinges on compliance with the 120 day notice requirement of Idaho Code §6-905. Accordingly, the classification created by the notice requirement is not substantially related to this purported justification.

Next, the state contends that the notice of claim provision allows the government entity time to negotiate an

amicable accord with the injured party. While this goal is desirable, it has no relationship to the classification created by the notice requirement. Settlements can be reached at any time after the injury, even during trial. The key element of an amicable settlement is the state of mind of the parties, not the timing of the negotiations. If the parties agree, a settlement can be reached whether or not a claim has been filed. In fact, the motivation to settle appears greater after a formal complaint has been filed than when a simple notice of claim has been given. Thus, since this justification has no rational or substantial relationship to the burden created by the notice requirement, it is not adequate to justify Idaho Code §6-905.

Accordingly, under the substantial relashionship test of **Reed v. Reed,** the purported justifications offered for Idaho Code §6-905 do not pass constitutional muster. The public policy of adequate redress for tortious injury is thwarted by the technical, albeit complete, defense offered the state by Idaho Code §6-905.

3. THE IRREBUTTABLE PRESUMPTIONS CREATED BY IDAHO CODE §6-905 DEPRIVE APPELLANTS OF THEIR PROCEDURAL DUE PROCESS RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT.

When faced with the contention that a particular legislatice classification deprives those burdened by the classification of their procedural due process rights, this Court has implemented an irrebuttable presumption analysis to weigh the constitutional validity of the statute in question. **U.S. Dept. of Agriculture v. Murray,** 413 U.S. 508 (1973); **Vlandis v. Kline,** 412 U.S. 441 (1973); **Stanley v. Illinois,** 405 U.S. 645 (1972). Pursuant to this analysis, if a statute imposes burdens on a class of individuals for a valid purpose, and some of those burdened by the classification are

positioned such that burdening them does not further that purpose, then the statutory classification must provide some means of determining the applicability of the presumption created by the classification to each individual case. Since the legislature has conclusively presumed that the purpose of the imposition of a burden is common to all individuals in the affected class, procedural due proces thus requires an opportunity to rebut this presumption.

Judicial interpretation of Idaho Code §6-905, in the decision below, posits two justifications for the imposition of a burden of giving notice upon victims of government negligence. These are (1) to give the govenment entity time to investigate the claim, determine its merits, and prepare a defense if necessary and (2) to give the government entity time to negotiate an amicable accord with the injured party. **Agost v. The State of Idaho,** 96 Idaho ....., 535 P.2d 1348. Idaho Code §6-905, together with the provision of §6-908 which mandates dismissal of suit for noncompliance with §6-905, impose an irrebuttable presumption that a proper investigation and an amicable accord cannot be reached if the claimant has not filed notice of claim within 120 days. Accordingly, the validity of these justifications in the instant case must be ascertained in order to determine whether Appellants procedural due process rights have been deprived.

First, an irrebuttable presumption exists that a proper governmental investigation cannot be made concerning claims filed after the 120 day otice period has expired. However, pursuant to Idaho Code §5-219(4), private tort victims are given two years in which to file suit without a notice of claim requirement. Private tort-feasors apparently are quite capable of investigating a suit within the two year period. Further, the instant situations demonstrate that the state has already made an extensive investi-

gation of the accident well within the 120 day notice period. Additionally, the state has a plethora of investigative personnel at its disposal. Thus, given the situation in the instant cases, where prompt state investigations were made shortly after the accidents, and given the inevitable use of this material by the state on the issue of substantive liability, this purported justification is simply not applicable here.

Next, an irrebuttable presumption exists that an amicable accord between the parties cannot be reached if notice is not given to the state within 120 days. As specified, in the equal protection section of this Jurisdictional Statement, the key element of an amicable settlement is the state of mind of the parties, not the timing of the negotiation. Further, the likelihood of a settlement being reached is even greater after a formal complaint has been filed than at the time of filing of notice.

Thus, the justifications offered for the burden of giving notice, imposed upon victims of governmental negligence by Idaho Code §6-905, definitely do not apply to the instant case, if, in fact, they are applicable to any of the natural class of govenment tort victims burdened by this statute. Accordingly, since Idaho Code §6-905 creates the aforementioned irrebuttable presumptions, and since these presumptions are not herein applicable, Appellants contend that the statute must be modified to provide an opportunity to rebut these presumptions.

It is herein submitted that the Supreme Court of the State of Idaho, in the decision below, has failed to recognize the constitutional infirmities of both the notice of claim provisions of the Idaho Tort Claims Act and the mandatory dismissal of suits for noncompliance with the notice requirement. In upholding the constitutionality of Idaho Code §6-905, the decision below considered and rejected the fore-

going contentions.

Because the decision below represents a revitalization of the last vestige of the antiquated doctrine of sovereign immunity; because the Idaho Legislature has replaced complete sovereign immunity with a statutory scheme which is both substantively and procedurally infirm under the Constitution of the United States in that it, unlike progressive sister state legislation, does not allow equitable escape from the harsh effects of untimely filing of notice of claim; and because there is a compelling nationwide interest in achieving a uniform judicial test of statutory classifications under the equal protection clause, Appellants believe that the questions presented by this appeal are substantial and of public importance.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court grant jurisdiction of this appeal, for plenary consideration with briefs on the merits and oral argument.

Respectfully submitted,

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NICHOLAS CHENOWETH
Orofino, Idaho

.....

LLOYD J. WEBB
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ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF IDAHO

STATE OF IDAHO
COUNTY OF TWIN FALLS } ss. AFFIDAVIT OF SERVICE

Lloyd J. Webb, being first duly sworn, deposes and certifies that on this ...2... day of September, 1975, three copies of the Jurisdictional Statement were mailed, postage prepaid, to Counsel for the Appellees at the following addresses.

Peter C. Jenkins
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Wayne Kidwell
Attorney General
Attorney General's Office - Statehouse
Boise, Idaho 83701

I further certify that all parties required to be served have been served.

.....
Counsel for Appellant

Subscribed and sworn to before me this ...5... day of September, 1975.

.....
Notary Public
Residence: Twin Falls, Idaho